

REMARKS

INTRODUCTION:

In accordance with the foregoing, claims 12 and 13 are allowed. Claims 29-42 are rejected. Reconsideration of pending claims 12, 13, and 29-42 is respectfully requested.

The following discussion relates substantially to the nature of the conversation at the Examiner Interview conducted on October 19, 2004, wherein it was determined that (1) the Kirmuss reference be subjected to further search and review and (2) the Examiner will reconsider the Kirmuss reference. See Interview Summary dated 10/19/04.

REJECTION OF CLAIMS 1-11 AND 14-28 UNDER 35 U.S.C. §102(e):

In the Office Action, at page 1, numbered paragraph 1, claims 29-42 were rejected under 35 U.S.C. §103(a) as being unpatentable over Barts et al. (U.S. Patent Application Publication No. 2002/0082893) (hereinafter, "Barts") in view of Kirmuss (U.S. Patent Application Publication No. 2003/0080878).

The primary reference relied upon by the Examiner, Barts, relates to a product delivery system that moves products from manufacturing plant to destination. The system utilizes a centralized management organization to provide management functions in a delivery network.

The secondary reference relied upon by the Examiner, Kirmuss, relates to a video camera system mounted in a vehicle (police car) to monitor traffic. The system includes a video camera, a traffic violation detector (radar gun), and a video recorder to receive the video signal provided by the camera and record the video signal in a buffer. Kirmuss, Abstract. The video recorder is configured to accept data from a computer and synchronize and record the data with the recorded video signal so that it may be reviewed at a later time. Kirmuss, page 6, paragraph 0097.

Thus, the combination of Barts and Kirmuss would result in a product delivery system for moving products in a delivery network, the product delivery system having a video camera to monitor traffic conditions that is stored in a memory to be viewed at a later time.

Independent claim 29 of the present application, recites: "[a] vehicle information providing apparatus comprising: an authentication function for authenticating access from a user terminal by a key assigned to a purchaser of a vehicle; and an image providing function for

providing the user terminal with an image data representing the vehicle which is under manufacturing, if the authentication by said authentication function succeeds, wherein the image data allow the user to check on the progress of manufacturing the vehicle."

In a non-limiting example, independent claim 29 of the present application relates to a vehicle information providing apparatus that provides on-line information associated with a vehicle which is under manufacturing so that a user, i.e., purchaser of the vehicle, can monitor the progress of the manufacturing of the vehicle. The user of the information providing apparatus must be an authorized user per an authentication function.

Applicant disagrees with the Examiner's assertion that Kirmuss teaches an "image providing function for providing the user terminal with an image data representing the vehicle which is under manufacturing, if the authentication by said authentication function succeeds, wherein the image data allow the user to check on the progress of manufacturing of the vehicle." Kirmuss is related to a radar detection monitoring system in a police car. Specifically, Kirmuss discloses a video camera system mounted in a vehicle (police car) to monitor traffic. The system includes a video camera, a traffic violation detector (radar gun), and a video recorder to receive the video signal provided by the camera and record the video signal in a buffer. Thus, Kirmuss clearly does not teach or suggest the features of claim 29 of the present application.

The Examiner has not cited any evidence relating to a motivation to combine the references of Barts and Kirmuss. MPEP § 2142 states that "[w]hen the motivation to combine the teachings of the references is not immediately apparent, it is the duty of the Examiner to explain why the combination of the teachings is proper." The Examiner is required to present actual evidence and make particular findings related to the motivation to combine the teachings of the references. In re Kotzab, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000); In re Dembiczak, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999). Broad conclusory statements regarding the teaching of multiple references, standing alone, are not "evidence." Dembiczak, 50 USPQ2d at 1617. "The factual inquiry whether to combine the references must be thorough and searching." In re Lee, 61 USPQ2d 1430, 1433 (Fed. Cir. 2002) (citing McGinley v. Franklin Sports, Inc., 60 USPQ2d 1001, 1008 (Fed. Cir. 2001)). The factual inquiry must be based on objective evidence of record, and cannot be based on subjective belief and unknown authority. Id. at 1433-34. The Examiner must explain the reasons that one of ordinary skill in the art would have been

motivated to select the references and to combine them to render the claimed invention obvious. In re Rouffet, 47 USPQ2d 1453, 1459 (Fed. Cir. 1998).

Applicant disagrees with the Examiner's assertion in the Office Action on page 2, numbered paragraph 1, that "it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Barts to include an Event-Based Vehicle Image Capture as taught by Kirmuss, because the Event-Based Vehicle Image of Kirmuss allows to capture, locate, and monitor a vehicle image of the scene by a selected criteria." The assertion is conclusory and the Examiner has not cited any evidence from the relied upon references to support the assertion. As commonly understood, the Examiner bears the burden of establishing a *prima facie* case of obviousness based upon the prior art... "[the Examiner] can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references." In re Fritch, 23 USPQ 2d 1780, 1783 (Fed. Cir. 1992).

Despite the Examiner's attempt to evidence the obviousness modification rationale by relying on an unsupported assertion of "obvious to one of ordinary skill in the art", it is well settled that "the Board cannot simply reach conclusions based on its own understanding of experience - or on its assessment of what would be basic knowledge or common sense. Rather the Board must point to some concrete evidence in the record in support of these findings." In re Zurko, 258 F. 3d 1379, 1386, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001). See also In re Lee, 277 F. 3d 1338, 1344-45, 61 USPQ2d 1430, 1434-35 (Fed. Cir. 2002), in which the court required evidence for the determination of unpatentability by clarifying that the principles of "*common knowledge*" and "*common sense*" may only be applied to the analysis of evidence, rather than be a substitute for evidence. The court has also recently expanded their reasoning on this topic in In re Thrift, 298 F. 3d 1357, 1363, 63 USPQ2d 2002, 2008 (Fed. Cir. 2002).

Further, the Kirmuss reference is not "analogous prior art" for the purpose of analyzing the obviousness of the subject matter at issue. The Examiner must determine what is "analogous prior art" for the purpose of analyzing the obviousness of the subject matter at issue. "In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." In re Oetiker, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). See also In re Deminski, 796 F.2d 436, 230 USPQ

313 (Fed. Cir. 1986); In re Clay, 966 F.2d 656, 659, 23 USPQ2d 1058, 1060-61 (Fed. Cir. 1992) ("A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem."). As discussed above, Kirmuss relates to a radar detection monitoring system in a police car and the reference is not *reasonably pertinent* to a vehicle information providing apparatus that provides on-line information associated with a vehicle which is under manufacturing so that a user, i.e., purchaser of the vehicle, can monitor the progress of the manufacturing of the vehicle, as is disclosed by claim 29 of the present application.

Therefore, for at least the foregoing reasons, it is respectfully submitted that independent claim 29 patentably distinguishes over the references relied upon by the Examiner.

Similarly, independent claim 32 relates to a vehicle information providing apparatus, including: "an image providing function for informing the user terminal of a scheduled manufacturing time and for providing a real-time image data representing the vehicle which is being manufactured, if the authentication by said authentication function succeeds in the scheduled manufacturing time." Therefore, for at least the reasons that independent claim 29 patentably distinguishes over the references relied upon by the Examiner, it is respectfully submitted that independent claim 32 also patentably distinguishes over the references relied upon by the Examiner.

Similarly, independent claim 33 relates to a vehicle information providing apparatus, including: "an image providing function for providing the user terminal with an image data representing the vehicle which is under manufacturing by the manufacturing machine based on the instruction." Therefore, for at least the reasons that independent claim 29 patentably distinguishes over the references relied upon by the Examiner, it is respectfully submitted that independent claim 33 also patentably distinguishes over the references relied upon by the Examiner.

Similarly, independent claim 34 relates to a vehicle information providing apparatus, including: "means for providing the user terminal with an image data representing the vehicle being manufactured if access to the vehicle information is authenticated, wherein the image data allows a user to monitor the vehicle being manufactured." Therefore, for at least the reasons that independent claim 29 patentably distinguishes over the references relied upon by

the Examiner, it is respectfully submitted that independent claim 34 also patentably distinguishes over the references relied upon by the Examiner.

Similarly, independent claim 37 relates to a method of providing vehicle information to a user to monitor conditions of a selected vehicle, including: "providing the user terminal with an image data of the vehicle being manufactured if user access to the vehicle information is authenticated." Therefore, for at least the reasons that independent claim 29 patentably distinguishes over the references relied upon by the Examiner, it is respectfully submitted that independent claim 37 also patentably distinguishes over the references relied upon by the Examiner.

Similarly, independent claim 40 relates to a computer program having: "an image providing function for providing the user terminal with an image data representing the vehicle which is under manufacturing, if the authentication by said authentication function succeeds." Therefore, for at least the reasons that independent claim 29 patentably distinguishes over the references relied upon by the Examiner, it is respectfully submitted that independent claim 40 also patentably distinguishes over the references relied upon by the Examiner.

Claims 30-31 are dependent upon independent claim 29, claims 35-36 are dependent upon independent claim 34, claims 38-39 are dependent upon independent claim 37, and claims 41-42 are dependent upon independent claim 40. Therefore, for at least the reasons that independent claims 29, 34, 37, and 40 patentably distinguish over the references relied upon by the Examiner, it is respectfully submitted that dependent claims 30-31, 35-36, 38-39, and 41-42 also patentably distinguish over the references relied upon by the Examiner.

CONCLUSION:

In accordance with the foregoing, it is respectfully submitted that all outstanding rejections have been overcome and/or rendered moot. And further, that all pending claims patentably distinguish over the prior art. Thus, there being no further outstanding objections or rejections, the application is submitted as being in condition for allowance which action is earnestly solicited.

If the Examiner has any remaining issues to be addressed, it is believed that prosecution can be expedited by the Examiner contacting the undersigned attorney for a telephone interview to discuss resolution of such issues.

If there are any underpayments or overpayments of fees associated with the filing of this Amendment, please charge and/or credit the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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